Supreme Court, U.S.
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No. 05-547

IN THE
Supreme Court of the United States

JOSE ANTONIO LOPEZ,

Petitioner,

v.

ALBERTO GONZALES, ATTORNEY GENERAL
OF THE UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed Oct. 31, 2005.
Certiorari Granted April 3, 2006.

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United States Court of Appeals for the Eighth Circuit Docket Entries

04-2397 Jose Antonio Lopez v. John Ashcroft

Court of Appeals Docket #: 04-2397
Filed: 6/10/04
Jose Antonio Lopez v. John Ashcroft
Appeal from: Immigration & Naturalization Service

Lower court information:

District: 0090-1 : A91-726-777
Date Filed: **/**/**
Date order/judgment: 5/11/04
Date NOA filed: **/**/**

Fee status: paid

Current cases: None

6/10/04	Agency Case Docketed (jab)
6/10/04	PETITION for Review of an order of the INS, Board of Immigration Appeals [1776142] [04-2397] (jab)
6/10/04	BRIEFING SCHEDULE: Certified List due on 7/20/04 Appendix due on 8/3/04 , Opening brief due on 8/3/04 , responsive brief due on 9/2/04 , Reply brief due on 9/16/04 , (jab)
6/21/04	APPEARANCE for respondent, attorney Emily Anne Radford & Keith Bernstein [04-2397] [1779642] (skh)

7/23/04	MOTION of respondent, John Ashcroft , for extension of time to file administrative record until 9/20/04 . [04-2397] [1791976] w/service 7/23/04 (jpp)
7/26/04	ORDER filed:granting respondent motion extension of time to file administrative record. [1791976-1] [04-2397] [1791977] Certified list due on 9/20/04 , Appendix due on 10/4/04, Opening brief due on 10/4/04 , Responsive brief due on 11/3/04 . Reply brief due on 11/17/04 . (jpp)
9/16/04	MOTION of respondent, John Ashcroft , for extension of time to file record until 11/4/04 . [04-2397] [1812795] w/service 9/16/04 (skh)
9/20/04	ORDER filed:granting respondent motion extension of time to file record. [1812795-1] [04-2397] [1812796] Administrative Record/Tr. due on 11/4/04 . Opening brief & Appendix due on 11/18/04; Responsive brief due on 12/20/04. Reply brief due on 1/3/05 . (skh)
10/18/04	RECORDS received: Administrative Record consisting of 1 Volumes 1 copies [04-2397] (skh)
11/18/04	BRIEF FILED - Brief of Petitioner - Jose Antonio Lopez. 14 pages; w/addendum - 10 copies - w/service 11/16/04. w/diskette [04-2397] [1836542] (skh)
11/18/04	RECORDS received: Appendix filed by Petitioner Jose Antonio Lopez consisting of 1 Volume(s), 3 Copies. [04-2397] (skh)
12/27/04	APPEARANCE for respondent, attorney Russell J.E. Verby and David V. Bernal [04-2397] [1849423] (skh)

12/27/04	BRIEF FILED - Brief of Respondent - John Ashcroft. 3,626 Words; 10 copies - w/service 12/20/04. w/diskette [04-2397] [1849426] (skh)
1/3/05	MOTION of petitioner, Jose Antonio Lopez , for extension of time to file reply brief until 1/24/05. [04-2397] [1851447] w/service 1/3/05 (skh)
1/4/05	TO SCREENING to rw. [04-2397] (bwb)
1/5/05	ORDER filed: granting petitioner motion extension of time to file reply brief. [1851447-1] [1851450] Reply brief now due on 1/24/05. (skh)
1/14/05	RETURNED from Screening (10) [04-2397] (bwb)
1/20/05	MOTION of petitioner, Jose Antonio Lopez, for extension of time to file reply brief until 2/7/05. [04-2397] [1857945] w/service 1/20/05 (cah)
1/21/05	ORDER filed:granting petitioner motion extension of time to file reply brief. [1857945-1] [1857946] NO FURTHER EXTENSIONS. Reply brief now due on 2/7/05. (cah)
2/7/05	BRIEF FILED - Reply brief - Jose Antonio Lopez. 7 pages - 10 copies - w/service 2/4/05 - w/diskette [04-2397] [1866091] (cah)
5/16/05	RECORDS received: from St. Louis. Records Included: 1 Vol. Admin. Record. [04-2397] (jab)
5/19/05	*SET FOR ARGUMENT* - June in St. Paul. (tab)

6/21/05	28(j) citation received and filed from Respondent John Ashcroft. TO COURT [04-2397] [1918360] (tab)
6/24/05	APPEARANCE for petitioner, attorney Patricia G. Mattos [04-2397] [1920065] (tab)
6/24/05	ARGUED AND SUBMITTED IN ST. PAUL TO JUDGES Michael J. Melloy, Circuit Judge, Gerald W. Heaney, Senior Judge, Raymond W. Gruender, Circuit Judge . Patricia G. Mattos for Petitioner Jose Antonio Lopez . Russell J.E. Verby for Respondent John Ashcroft . Rebuttal by: Patricia Mattos. RECORDED. [04-2397] (tab)
8/9/05	THE COURT: Michael J. Melloy, Gerald W. Heaney, Raymond W. Gruender. OPINION FILED by Raymond W. Gruender, Authoring Judge PUBLISHED. [04-2397] [1937887] (srd)
8/9/05	JUDGMENT: Michael J. Melloy, Gerald W. Heaney, Raymond W. Gruender. DENIED [04-2397] [1937890] (srd)
9/22/05	MOTION of petitioner, Jose Antonio Lopez, to stay mandate. [04-2397] [1955566], TO COURT w/service 09/23/05 (srd)
9/28/05	JUDGE ORDER: denying petitioner motion to stay mandate [1955566-1] filed by Jose Antonio Lopez [04-2397] [1957459] (srd)
10/14/05	CERTIFIED COPIES JUDGMENT sent to Counsel [04-2397] (srd)
11/7/05	U.S. Supreme Court notice filed. Petition for writ of certiorari filed in the Supreme Court on 10/31/05. Supreme Ct. Case No.: 05-547 [04-2397] [1972370] (mer)

4/10/06	Notification from Supreme Court dated 04/03/06 stating that they had entered an order granting Supreme Court notice for certiorari in 05-547 and 05-7664 and the cases are consolidated for a one-hour allotted oral argument. [04-2397] [2033016] in Sup. Ct. No. 05-547 . [04-2397] (srd)

Proceedings Before the Immigration Judge

July 23, 1998:

[Page 6]

JUDGE TO MR. CASPER

* * *

Q. How do you plead to the six factual allegations?

[Page 7]

A. We admit the six factual allegations.

Q. There are two charges of removability. One is a controlled substance violator. Do you concede that?

A. Yes, Your Honor.

Q. The second is an aggravated felony. Do you deny that?

A. Yes, we do.

Q. All right. So there is an issue was to whether or not the respondent is an aggravated felon. Before we went on the record, you said you would be requesting some time to prepare for the hearing on that issue.

A. Yes, Your Honor.

Sept. 6, 2000:

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* * *

JUDGE FOR THE RECORD

All right. I'm going to rule on the issue of removability on the aggravated felony charge. I believe this case falls within the authority of the Court's decision in *K-V-D-*, Int. Dec. 3422 (BIA December 10th '99). There's not a

precedent decision from the 8th Circuit that controls this case to the contrary of the Board's decision in the *Matter of L-G-*. There's an unpublished 8th Circuit decision, but that is not a precedent decision in my view. So I believe this situation is still controlled by *Matter of L-G-*, 21 I&N 89 BIA (1995). So I am not going to sustain the aggravated felony charge. Respondent is still removable on the controlled substance charge.

JUDGE TO MS. KOBERSTEIN

Q. So would he designate a country for removal?

A. Mexico, Your Honor.

Q. What relief will he be seeking?

A. He'll be seeking cancellation of removal and

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voluntary departure in the alternative.

* * *

December 5, 2000:

[Page 20]

* * *

JUDGE FOR THE RECORD

The Court sustained respondent's removability on the controlled substance violation, but did not sustain the aggravated felony. We're allowing the respondent to proceed with his application for cancellation of removal.

* * *

February 25, 2002:

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* * *

JUDGE TO MR. LOPEZ

Q. Okay, sir, come on up here. I'll swear you to your application. Raise your right hand. Okay, do you swear that you know the contents of your application for cancellation of removal, including the attached documents and supplements and that they are all true and correct to the best of your knowledge?

A. Yes.

Q. Do you swear that the testimony that you'll give here today will be the truth, the whole and nothing but the truth?

A. Yes.

Q. I need you to sign these. I need you to sign by the red X here. Okay, then take the seat over in the witness stand.

JUDGE TO MS. KOBERSTEIN

Q. Give me just a minute, then you can start, Ms. Koberstein. Okay, we'll proceed with your direct then.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Mr. Lopez, what is your current address?

A. 100 East McClellan, Sioux Falls.

Q. And how long have you lived at that address?

A. I think about four years.

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Q. Okay. What's your birth date?

A. June 14, 1969.

Q. And how old are you now?

A. 32.

Q. And where were you born?

A. Tomalacalisco (phonetic sp.), Mexico.

Q. When is the first time that you ever entered the United States?

A. May 19, '86.

Q. And how old were you when you came to the United States?

A. I was going to be 17 years old.

Q. And how did you enter the United States?

A. Through San Ysidro, San Diego.

Q. Did you enter legally or illegally?

A. Illegally.

Q. And why did you decide to come to the United States at that time?

A. To get a better life than I, than I had in Mexico.

Q. Where did you live when you first came to the United States?

A. In Los Angeles, California.

Q. And how long did you live in California for?

A. We lived in California for 10 or 11 years.

Q. What did you do in California?

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A. I work at a junkyard. I work at this company Bonds, Bonds Company.

JUDGE TO MR. LOPEZ

Q. What was your first job in the United States?

MR. SOLI TO JUDGE

Q. Your Honor, perhaps we could have the interpreter pull the microphone closer. I'm a little concerned about the --

A. That's probably a good idea.

JUDGE TO INTERPRETER

Q. Go ahead.

A. The first job I had was at a Fred's Auto Wrecking.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Did you ever do any agricultural work in the United States?

A. Yes.

JUDGE TO MR. LOPEZ

Q. What years?

A. I think it was `87, `87, something like that.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Did you ever apply for a legal permanent residency in the United States?

A. Yes.

Q. When did you first apply for your residency in the United States?

A. In `88.

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Q. Do you know under what program you applied for a residency in the United States?

A. For workers in the fields.

Q. Okay. Was your application for residency in the United States approved?

A. In 1990, they give me the residency.

Q. Okay. Did you get temporary residency before 1990?

A. Yes, they give me a red permit, and then they give a green permit.

Q. In what year did you first get temporary residency in the United States?

A. In `90.

Q. Well, that was your permanent residency, correct?

A. Yes, that was, I think the pink one.

Q. Okay, but before that year did you get temporary residency?

A. Yes.

Q. Do you remember in what year you got your temporary residency, temporary?

A. I think it was in `88.

Q. Okay.

* * *

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* * *

MS. KOBERSTEIN TO MR. LOPEZ

Q. Mr. Lopez, are you currently married?

A. Yes.

Q. And what is your wife's name?

A. Maria Delaluz (phonetic sp.) Lopez.

Q. And when did you and your wife marry?

A. In 1994.

Q. And where did you get married?

A. In Mexico.

Q. Where is your wife from?

A. Tomalacalisco.

Q. And that's in Mexico?

A. It's the same town, where I, where I lived.

Q. Do you and your wife have any children together?

A. Yes.

Q. How many?

A. Two.

Q. And what are your children's names?

A. Anthony Lopez and Selma Rosaro Lopez (phonetic sp.).

Q. Okay, what are your children's birth dates?

A. Anthony was born in November of 1995, and Selma born February 6, 2000.

Q. Where were your children born?

A. Anthony, born in California; and Selma, born in South Dakota.

Q. Does your older child attend school in the United States?

A. Yes.

Q. Where does he attend school?

A. Hawthorne. I think that's it, Hawthorne.

Q. Is that in South Dakota?

A. Yes, South Dakota.

Q. What grade is he in?

A. Kindergarten.

Q. When did you move to South Dakota?

A. In 1996.

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Q. Besides California and South Dakota, have you ever lived in any other state of the United States?

A. No.

Q. Why did you decide to move to South Dakota?

A. The salaries are better out there.

Q. Okay. Since you've lived in South Dakota, what type of work have you done there?

A. I work at this slaughterhouse for a year, Dakota Pork.

Q. And before Dakota Pork, what did you do?

A. I work at a shop, auto shop in San Jose, California.

Q. In South Dakota, have you ever worked anywhere besides Dakota Pork?

A. Yes, after that, I got out of prison, I went to work for Dolphin Roofing Company and Hockinson (phonetic sp.) Farm. And then from there, I went to Morell's (phonetic sp.) for four months.

JUDGE TO MR. LOPEZ

Q Sir, except for the time you've been in jail, have you ever had any periods of unemployment?

A. No.

MS. KOBERSTEIN TO MR. LOPEZ

Q. What do you do now to earn a living?

A. I do have a grocery store in South Dakota, Sioux

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Falls, South Dakota.

Q. Are you the owner of that grocery store?

A. Yes.

Q. What's the name of the store?

A. Lopez Mexican Crafts.

Q. Okay. Do you own the store by yourself or do you own it with other people?

A. Myself.

Q. Okay. Is this the only business that you've ever owned?

A. Last year I had a taco stand.

Q. Okay, and where did you have the taco stand?

A. At the same, Sioux Falls.

Q. Okay. How long have you had the grocery store?

A. Since last year, since June of last year.

Q. June of 2001?

A. Yes.

Q. Do you work at the store?

A. Yes.

Q. How many days a week do you work there?

A. Seven days.

Q. Usually how many hours a day do you work there?

A. We're open at 9 a.m. until 9 p m

Q. And are you usually there all those hours?

A. When I have to get merchandise, my wife is there.

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But usually, me and my wife will take turns.

JUDGE TO MR. LOPEZ

Q. Sir, does your wife have permission to work in the United States?

A. No.

Q. Okay.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Do you employ any other people at the store?

A. No.

Q. Is the store profitable at this time?

A. No, I don't think it's that bad because we're living out of there.

Q. Are you making enough money to support your family?

A. I think so.

Q. Besides the grocery store, are you working at any other place right now?

A. At the moment, no.

JUDGE TO MS. KOBERSTEIN

Q That'd be a pretty good trick if he's working 80 hours a week at the grocery store, Ms. Koberstein.

A. Just wanted to clarify that.

Q. Okay.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Did you have to apply for any licenses to open the

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store?

A. Yes.

Q. What type of licenses did you need?

A. For the taxes, for the city and the health department.

Q. Okay. Have you ever personally used welfare in the United States in your own name?

A. No, never.

Q. Has anyone in your immediate family ever used any welfare in the United States?

A. My two children have had Medicare, both for only two years.

Q. Are they receiving Medicare or medical assistance now?

A. Not at the moment.

Q. Have they ever used any cash assistance?

A. No, never.

JUDGE TO MR. LOPEZ

Q. No food stamps?

A. Never.

* * *

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* * *

A. Okay. How many times have you ever been arrested by the police in the United States?

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Q. Only one time.

A. You were arrested one time?

Q. Yes.

A. And when did that arrest take place?

Q. `97.

A. And where were you arrested?

Q. Huron, South Dakota.

JUDGE FOR THE RECORD

Huron, H-U-R-O-N.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Were you charged with a crime in relation to that arrest?

A. Yes.

Q. And what were you charged with?

A. Aiding and abetting the possession of cocaine.

Q. Okay. Who was the person that you were charged with aiding and abetting?

A. Juan Valdez.

Q. And was Mr. Valdez a friend of yours

A. No, no, not really.

Q. How did you know Mr. Valdez?

A. Through his brother. I know, I know his brother better.

Q. Okay. Were you found guilty of that charge?

A. Yes.

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Q. Did you plead guilty?

A. Yes.

Q. Okay.

JUDGE TO MS. KOBERSTEIN

Q. Why don't we hear something about the circumstances of the crime. From what I've seen here, it's really, the documentation I have, there was no PSI, is there?

A. Yes, I will be asking him questions about it.

MR. SOLI TO JUDGE

Q. Is there a PSI?

A. No. I didn't see one. That was not in the file.

MS. KOBERSTEIN TO JUDGE

Q. I'm not aware that one was done, no.

MR. SOLI TO JUDGE

Q. It would be done on a felony charge.

A. Well, let's get the details of the crime.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Did the police search your home in relationship to that arrest?

A. Yes.

Q. Did the police find drugs at your house?

A. No.

Q. What did the police find at your house?

A. They found money that Juan Valdez, Juan Valdez pay me.

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JUDGE TO MR. LOPEZ

Q. How much money?

A. $600, yeah, about $600.

Q Why did he pay you pay $600?

A. Yes, when Juan Valdez went to jail, his brother asked me for some money to, to get a bail, and that's why I brought him the money.

MS. KOBERSTEIN TO MR. LOPEZ

Q How many days before the police searched your home had Juan Valdez been arrested?

A. (Interpreter) Interpreter would like to have a repetition.

Q. How many days before the police searched your home had Mr. Valdez been arrested?

A. One, I think it was two days.

Q. Okay. Who asked you for help in paying Mr. Valdez's bond?

A. His brother, Adam Valdez.

Q. And did you lend him money to help pay for Mr. Valdez's bond?

A. Yes.

Q. Who did you give the money to?

A. To Adam Valdez.

Q. Okay, when had the money been returned to you?

A. Two days after that when that happened.

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Q. Who returned the money to you?

A. Juan Valdez.

Q. Did he come to your house and give you the money?

A. Yes.

Q. Did he tell you why he was returning the money to you?

A. Yes, he said it was the money that I borrow him.

Q. But did he have any explanation why he didn't need the money any longer?

A. No.

Q. Okay. How long after Mr. Valdez returned to money to you did the police come and search your home?

A. About two, three hours.

Q. Why did the police think that you aided and abetted Mr. Valdez to possess cocaine?

A. Because he told him that I give, give him that to, to him.

Q. He told you the police that you gave him cocaine?

A. Yes.

Q. Did you give cocaine to Mr. Valdez?

A. No.

Q. Did you sell cocaine to Mr. Valdez?

A. No.

Q. What did you do to aid and abet Mr. Valdez in possessing cocaine?

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A. In one conversation I told him that I knew somebody that was selling those things. But I didn't think that this was going to be such a bad thing.

Q. Did Mr. Valdez ask you where he could buy cocaine?

A. Yes.

Q. When did he ask you that?

A. That was about a few days before that.

Q. A few days before his arrest?

A. Yes.

Q. Did you tell Mr. Valdez where he could buy cocaine?

A. Yes.

Q. How did you know where someone could go to buy cocaine?

A. In that town there were a few Hispanics, you know, so long you (indiscernible) and for a reason, for one reason I found out and for me that was the easy thing to do to tell him that.

Q. Did you call that person for Mr. Valdez and help him arrange to buy cocaine?

A. No, I didn't. No, I never seen the drugs.

Q. Besides telling Mr. Valdez where he could buy them, buy the drugs, did you help him in any way to get those drugs?

A. No.

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Q. Have you ever been involved in the sale of illegal drugs?

A. Only that time.

Q. Okay. Have you ever personally sold illegal drugs?

A. No, never have.

JUDGE TO MR. LOPEZ

Q. Have you ever used any illegal drugs in the United States?

A. Never.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Do you admit wrongdoing in what happened with Mr. Valdez?

A. Yes.

Q. What do you think that you did wrong in that incident?

A. I helped him out to obtain the drugs.

Q When you were arrested in 1997, were you working at the time?

A. Yes.

Q. Where were you working?

A. In Dakota Pork.

Q. Were you working there full time?

A. Yes.

Q. Okay. Were you arrested in the beginning of 1997

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or the end of 1997 or when?

A. At the beginning, I think it was around March.

Q. What sentence did you receive for your conviction?

A. Five years.

Q. And how much time did you actually serve in prison?

A. 15 months.

Q. Why were you only required to serve 15 months?

A. Well, for my good, my good conduct, if you behave, you only do 25 percent of it.

Q. Okay. Were you placed on probation when you were released from prison?

A. Yes.

Q. How long were you on probation for?

A. For four years, but three or four months ago, they dropped it.

Q. As part of your probation, were you ever drug tested?

A. Yes.

Q. Did you ever fail a drug test?

A. Never.

Q. Did you pay all the fines and restitution ordered by the Court?

A. Yes.

Q. Was Mr. Valdez ever convicted of a crime in

[Page 47]

relation to those arrests?

A. (Interpreter) Interpreter would like to have a repetition.

Q. Was Mr. Valdez ever convicted of a crime?

A. For that time what I know.

Q. Do you know what he was convicted of?

A. Yes.

Q. What was he convicted of?

A. I don't know how long they give him, but he was in the same prison that I was at.

Q. What he charged with possession of cocaine?

A. I think so.

JUDGE FOR THE RECORD

Let's go to the next tape.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE FOR THE RECORD

This is tape 2, file A 91 726 777.

JUDGE TO MS. KOBERSTEIN

Q. Go ahead.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Do you know where Mr. Valdez is now?

A. I don't have idea.

Q. All right. Is he still in prison?

A. No, he got out before I did.

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Q. Are you in contact with him at all?

A. No.

Q. Have you ever had any alcohol abuse problems?

A. Never.

Q. Have you ever gone through drug or alcohol treatment?

A. No.

Q. Do you associate now with anyone who's involved with illegal drugs?

A. No.

Q. Do you think you've learned anything from your experience of being arrested back in 1997?

A. Yes.

Q. What do you think you've learned from that experience?

A. What I learned is you can't really trust anybody and you can't really, well, I don't know. I think, I guess, it make me see things differently.

Q. Do you think you'll ever be involved in another situation like that again in the future?

A. I don't think so.

Q. Why not?

A. Okay, I think, because if, if you work and dedicate yourself to your house, I don't think you have to get involved in a situation like that.

Q. Besides that arrest in 1997, have you ever been arrested on any other occasion in the United States?

A. No, never.

Q. Have the police ever been called to your house for any reason?

A. No. Never been arrested for drunk driving?

Q. No.

A. Have you ever been arrested by the police in Mexico?

JUDGE TO MS. KOBERSTEIN

Q. He said, no. Sorry, go ahead.

MR. LOPEZ TO MS. KOBERSTEIN

Q. No.

A. Have you ever owned property in the United States?

Q. I have a trailer where I, I have my trailer where I live.

A. And are you the owner of that trailer?

Q. Yes.

A. Do you have any other plans to own property in the United States?

Q. I'm in the process, I'm in the process to buy a house in Worthington, Worthington, yeah. Because the paperwork's not done. I went to see the house and everything, but because the agreement is going to be between me and that, that woman, so the attorney hasn't done all the paperwork.

[Page 50]

A. Okay. If you are allowed to remain in the United States, what kind of plans do you have for your future?

Q. Well, to work in my business and to make it grow and expand for the future.

A. Have you filed a petition to immigrate your wife to the United States?

Q. Yes.

A. Okay.

JUDGE TO MR. LOPEZ

Q. What year, what year did you file that?

A. Last year.

MS. KOBERSTEIN TO MR. LOPEZ

Q. Do you know what the status of that petition is?

A. She's been approved. She's just waiting for her turn.

Q. Okay.

MS. KOBERSTEIN TO JUDGE

Q. I have no further questions at this time, Your Honor.

JUDGE TO MR. SOLI

Q. Cross.

MR. SOLI TO MR. LOPEZ

Q. How far is Huron from Worthington?

A. I think it's about three hours.

Q. Where is your grocery store located?

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A. In Sioux Falls.

Q. How far is Sioux Falls from Worthington?

A. It's over 45 minutes.

Q. Did you attend school in Mexico?

A. To middle school.

Q. How many years were you in school?

A. About second grade of middle school. That's about seven years, eight years.

Q Did you finish the secondary school?

A. No, I didn't finish it.

Q. And how old were you when you left school?

A. I was about 15 years old.

Q. What did you do right after you left school?

A. I work, I work, I work with one of my uncles in a jewelry store.

Q. Your uncle had a jewelry store?

A. Yes, he had a jewelry store.

MR. SOLI TO JUDGE

Q. I can't hear the interpreter.

A. (Interpreter) He had a jewelry store.

MR. SOLI TO MR. LOPEZ

Q. And how long did you do that?

A. About six, seven months. I don't remember.

Q. And then what did you do?

A. And I worked at a, just a second -

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Q. -- craft store.

A. - crafts, I worked for the crafts. And my whole family are involved in that.

Q. What type of crafts does your family make?

A. Clay.

Q. I'm sorry?

A. Clay.

Q. And is your family in Mexico still involved in crafting material out of clay?

A. Yes.

Q. Is that how they support themselves?

A. Yes.

* * *

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* * *

Q. The store you're now operating, is it located in a building you own?

A. (Interpreter) Interpreter would like -

Q. I'll repeat the question. Lopez Mexican Craft and Market, is that located in a building owned by you or by someone else?

A. Somebody else.

Q. Who?

A. Morei (phonetic sp.) Construction.

Q. How much do you pay a month for rent or lease of the property?

A. 675 plus bills.

Q. How much did it cost to purchase an inventory for your store when you first opened?

A. I think about $6,000, 6, $7,000.

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Q. Where did you get the money?

A. I work at Hockinson Farm, and I had a taco stand. Then I sold it and with that money, it helps out to open the store.

Q. Did you take out any loans?

A. No.

Q. Have you ever been sued?

A. No.

Q. Have you ever filed for bankruptcy?

A. No, never.

* * *

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* * *

Q. Okay. What were you initially charged with in connection with your crime?

A. Aiding and abetting of possession of cocaine.

Q. No, that's what you plead guilty to, isn't it?

A. Yes.

Q. Weren't you indicted for, to read from the indictment, from November '96 through March 11, '97, Jose Antonio Lopez committed the public offense of possession of a controlled substance?

A. Well, no. I did have a charges of a possession and distribution and for the place to sell. But they all, they, all those got dropped and they only left me the charges about aiding and abetting.

* * *

July 12, 2002:

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JUDGE TO MS. KOBERSTEIN

Q. Okay. Do you waive reading of the I-261, Ms.

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Koberstein?

A. Yes, Your Honor.

Q. How do you plead to the additional allegation?

A. We admit the additional allegation.

Q. Okay, this case has been going for a while on a cancellation application. In the Notice to Appear, I had originally not sustained the aggravated felony charged based on *K-V-D-*. *K-V-D-* is now overruled by *Mater of Yanez*. As I read *Matter of Yanez*, it looks like the respondent would be convicted of an aggravated felony based on the 8th Circuit precedent *Briones-Mata*. You want to educate me otherwise?

A. Well, yes. I don't agree that the respondent falls within *Yanez* in this case.

* * *

Administrative Record Excerpts

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE

STATE OF SOUTH DAKOTA, *Plaintiff*,

vs.

JOSE ANTONIO LOPEZ, aka ANTONIO JOSE LOPEZ, aka ANTONIO GARCIA LOPEZ, aka TONI LOPEZ aka ANTONIO GARCIA aka JOSE ANTONIO LOPEZ ESPRZA, *Defendant*.

JUDGMENT AND CONVICTION AND SENTENCE

Court File #97-289

An Information was filed with this Court on the 1st day of July 1997, charging the Defendant JOSE ANTONIO LOPEZ with the crime of AIDING AND ABETTING THE POSSESSION OF CONTROLLED SUBSTANCE (SDCL 22-42-5 & 22-3-3).

The Defendant was arraigned on said Information on the 1st day of July 1997. The Defendant, and his attorney, Gary Blue and Kaarin Long, Deputy Beadle County State's Attorney, appeared at the Defendant's arraignment.

The Court advised the Defendant of all constitutional and statutory rights pertaining to the charge filed against the Defendant. The Defendant pled guilty of the charge of

AIDING AND ABETTING THE POSSESSION OF CONTROLLED SUBSTANCE (SDCL 22-42-5 &22-33-3).

It is the determination of this Court that the Defendant has been regularly held to answer for said offense; that said plea was voluntary, knowing and intelligent; that the Defendant was represented by competent counsel; and that a factual basis existed for the plea.

It is, therefore, the JUDGMENT of this Court that the Defendant is guilty of AIDING AND ABETTING THE POSSESSION OF A CONTROLLED SUBSTANCE IN violation of (SDCL 22-42-5 & 22-3-3)

SENTENCE

On the 12th day of September, 1997, the Defendant and his attorney Gary Blue and Kaarin Long appeared for the State of South Dakota, the Court asked whether any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, JOSE ANTONIO LOPEZ shall pay court costs in the amount of $26.50.

IT IS HEREBY ORDERED that the Defendant shall serve five (5) years in the South Dakota State Penitentiary, Sioux Falls, South Dakota.

IT IS FURTHER ORDERED that the Defendant shall receive credit for time served in the Regional Correction Center, Huron, South Dakota, from March 13, 1997, to September 12, 1997, (184 days), and from September 12, 1997, until the Defendant is received at the South Dakota State Penitentiary, Sioux Falls, South Dakota.

IT IS FURTHER ORDERED that the Defendant shall reimburse Beadle County for his court-appointed attorney fees.

IT IS FURTHER ORDERED that the Defendant pay to the Beadle County Clerk of Courts for reimbursement to the Office of Attorney General, 500 E. Capitol, Pieere, South Dakota 57501) for the costs of grand jury transcripts attributable to the Defendant in this action in the amount of one hundred twenty-nine dollars ($129.00).

IT IS FURTHER ORDERED that the Defendant pay to the Beadle County Clerk of Courts (for reimbursement to the Statewide Drug Task Force, & Division of Criminal Investigation, E. Highway 34, Pierre, South Dakota, 57501) for the costs of testing the controlled substance in this case in the amount of $50.00.

IT IS FURTHERED ORDERED that the Defendant be remanded to the custody of the Sheriff of Beadle County, South Dakota, pending execution of this sentence and the Sheriff is hereby directed to immediately transport the Defendant to the South Dakota State Penitentiary, Sioux Falls, South Dakota.

Dated this 12 day of September, 1997, at Huron, Beadle County, South Dakota.

BY THE COURT:

/s/

EUGENE L. MARTIN

Circuit Court Judge

ATTEST:

/s/

Beadle County Clerk of Courts

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE

STATE OF SOUTH DAKOTA, *Plaintiff*,

v.

JOSE ANTONIO LOPEZ, aka 6-14-69, *Defendant*.

Crim. No. 97-289

INFORMATION FOR: AIDING AND ABETTING THE POSSESSION OF A CONTROLLED SUBSTANCE, TO-WIT: COCAINE (SDCL 22-42-5, 22-3-3)

(CLASS 5 FELONY)

M. Bridget Mayer, as prosecuting attorney in the name of and by the authority of the State of South Dakota, makes and files this Information against Jose Antonio Lopez, and charges as to:

Count I

That during the approximate month of March, 1997, within Beadle County, South Dakota, Jose Antonio Lopez did commit the public offense of AIDING AND ABETTING THE POSSESSION OF A CONTROLLED SUBSTANCE, TO-WIT: COCAINE in that he did, then and there, aided, abetted, or advised another person, i.e. Juan Valdez, to possess a controlled substance, to-wit: cocaine, in violation of SDCL 22-42-5 & 22-3-3; contrary to statute in such case made and provide against the peace and dignity of the State of South Dakota.

Dated this 1st day of July 1997, at Pierre, South Dakota.

/s/

M. Bridget Mayer
Assistant Attorney General
Prosecuting Attorney

STATE OF SOUTH DAKOTA

COUNTY OF HUGHES

M. Bridget Mayer, being first duly sworn, states that she is the prosecuting attorney for the above matter, that she has read the foregoing Information, and the same is true to her own best knowledge, information and belief.

/s/

Prosecuting Attorney

WITNESSES KNOWN TO THE PROSECUTING ATTORNEY AT THE TIME OF THE FILING OF THIS INFORMATION:

Juan Valdez

Todd Ingalls

John Bierne

Roger Mathison

WITNESSES WHO BECAME KNOWN TO THE PROSECUTING ATTORNEY AFTER THE FILING OF THE INFORMATION AND ENDORSED WITH THE PERMISSION OF THE COURT:

U.S. Department of Justice
Immigration and Naturalization Service

Additional Charges of Inadmissibility/Deportability

In: ☒ Removal proceedings under section 240 of the Immigration and Nationality Act

☐ Deportation proceedings commenced prior to April 1, 1997 under former section 242 of the Immigration and Nationality Act

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In the Matter of:

Alien/Respondent:	Jose Antonio Lopez
File No.:	A91 726 777
Address:	100 East McCleellan St. #12 Sioux Falls, SD

There is/are hereby lodged against you the additional charge(s) that you are subject to being taken into custody and deported or removed from the United States pursuant to the following provision(s) of law:

In support of the additional charge(s) there is submitted the following allegation(s) ☒ in addition to ☐ in lieu of those set forth in the original charging documents:

7. You were sentenced in a term of five-years imprisonment for this felony conviction.

Dated: July 12, 2002

/s/

(Signature of Service Consul)

Notice to Respondent
Jose Antonio Lopez

Warning: Any statement you make may be used against you in removal proceeding.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witness considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the charging document and that you are inadmissible or deportable on the charges contained in the charging document. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the

receipt of evidence and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change our address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of the hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Certificate of Service

This charging document was served on the respondent by me on July 12, 2002, in the following manner in compliance with section 239(a) (1) of the Act:

☒ in person

☐ by certified mail, return receipt requested

☐ by regular mail

to: Jose Antonio Lopez

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b) (7) of the Act.

/s/

Richard Soli
District Counsel

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE

STATE OF SOUTH DAKOTA, *Plaintiff*,

v.

JOSE ANTONIO LOPEZ, *Defendant*.

DISMISSAL OF INDICTMENT

COUNT I-POSSESSION OF CONTROLLED SUBSTANCE

COUNT II-CONSPIRACY TO DISTRIBUTE A CONTROLLED SUBSTANCE

COUNT III-DISTRIBUTION OF A CONTROLLED SUBSTANCE

Court File #97-120

Pursuant to SDCL 23A-44-2, KAARIN LONG, the prosecuting attorney dismisses the Indictment that has been filed in this case, as it pertains to JOSE ANTONIO LOPEZ only.

Dated the 12th day of September, 1997, at Huron, South Dakota.

/s/

Prosecuting Attorney
KAARIN LONG

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE

STATE OF SOUTH DAKOTA, *Plaintiff*,

v.

JOSE ANTONIO LOPEZ,
DOB: ~~10-3-67~~ 6-14-69,

and

RUBIN L/N/U/,*Defendants*.

THE BEADLE COUNTY GRAND JURY CHARGES:

COUNT I

That during an approximate time frame of November, 1996, through March 11, 1997, in the County of Beadle, State of South Dakota, Jose Antonio Lopez did commit the public offense of POSSESSION OF A CONTROLLED SUBSTANCE (COCAINE), in that he did knowingly possess a controlled substance, to-wit: Cocaine, in violation of SDCL 22-42-5; and as to

COUNT II

That during an approximate time frame of November, 1996, through March 11, 1997, in the County of Beadle, State of South Dakota, Jose Antonio Lopez and/or Rubin L/N/U did commit the public offense of CONSPIRACY TO DISTRIBUTE CONTROLLED (COCAINE) in that each did conspire and agree with either each other and/or Juan Valdez and/or any other known or unknown co-conspirators, to commit the offense of DISTRIBUTION OF A CONTROLLED SUBSTANCE in violation of SDCL

22-3-3 and 22-42-2, and did one or more acts in furtherance of the conspiracy, to-wit:

1. Jose Antonio Valdez or "Tony" "fronted" marijuana to Juan Valdez (Valdez) in November, 1996 in Huron, South Dakota;

2. Prior to Christmas, 1996, Tony gave Valdez one or two eight ball quantities of cocaine. This occurred in the residence in the 800 block of Iowa Avenue, S.E., in Huron;

3. Prior to Christmas, 1996, Tony fronted additional cocaine to Valdez in Huron;

4. Approximately one month prior to March 11, 1997, Tony and Valdez met in a residence in the 900 block of Colorado Avenue in Huron, South Dakota, where approximately four ounces of cocaine was fronted to Valdez by Tony for approximately $1,200 to $1,250 per ounce;

5. Valdez weighted each ounce with his electronic gram scale in Tony's presence;

6. On or about March 7, 1997, Valdez asked Tony for more cocaine and Tony directed Valdez to call Rubin L/N/U;

7. Valdez called Rubin and Rubin told Valdez to meet him at the lunch room in Dakota Pork in Huron, South Dakota;

8. Valdez met Rubin at the lunch room in Dakota Pork and was fronted approximately four ounces of cocaine;

9. Valdez called Tony to find out the price he was to pay Tony for the cocaine that Rubin had fronted for Tony. Tony told Valdez the price would be $1,200 per ounce for two of the ounces and $1,250 per ounce for each of the other two ounces;

10. On or about March 12, 1997, Tony accepted from Valdez, $625 for cocaine that had previously been fronted to Valdez; and as to

COUNT III

That during an approximate tine frame of November, 1996, through March 11, 1997, in the County of Beadle, State of South Dakota, Jose Antonio Lopez did commit the public offense of DISTRIBUTION OF A CONTROLLED SUBSTANCE (COCAINE) in that he did distribute a controlled substance, to-wit: Cocaine, to Juan Mart-in Valdez, in violation of SDCL 22-42-2; and as to

COUNT IV

That during an approximate time frame of March 7, 2997, in the County of Beadle, State of South Dakota, Rubin L/N/U did commit the public offense of DISTRIBUTION OF A CONTROLLED SUBSTANCE (COCAINE), in that he did distribute a controlled substance, to-wit: Cocaine, to Juan Martin Valdez; and as to

COUNT V

That during art approximate time of March 7, 1997, in the County of Beadle, State of South Dakota, Rubin L/N/U did commit the public offense of POSSESSION OF A CONTROLLED SUBSTANCE (COCAINE), in that he did knowingly possess a controlled substance, to-wit: Cocaine, in violation of SDCL 22-42-5; in violation of SDCL 22-42-2; contrary to the statutes in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 21 day of March, 1997, at Huron, South Dakota.

"A TRUE BILL"

THIS INDICTMENT IS MADE WITH THE CONCURRENCE OF AT LEAST SIX GRAND JURORS.

/s/

Grand Jury Foreperson

WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY IN REGARD TO THIS INDICTMENT:

Juan Martin Valdez
Todd Ingalls
John Bierne